

David Hasfurther



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J. T. Construction Company, Inc.--
Reconsideration

File: B-242845.4

Date: March 2, 1992

Jaime Torres for the protester.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Third low offeror protesting the award of a contract on the basis that the joint venture awardee is not a small disadvantaged business is not an interested party under the Bid Protest Regulations to protest the award, since the protester would not be next in line for the award if the protest were upheld.

DECISION

J. T. Construction Company, Inc. (JTC) requests that we reconsider our dismissal of its protest against the award made under request for proposals No. F34650-91-R-0018, issued by the Department of the Air Force as a small disadvantaged business (SDB) set-aside. JTC protested that the awardee, a joint venture, was not an SDB. Based on an agency report showing that JTC was the third low offeror, we dismissed the protest because JTC was not next in line for the award even if we upheld its protest and, thus, was not an interested party to protest the low offeror's SDB status under our Bid Protest Regulations. 4 C.F.R. § 21.0(a) (1991).

In its request for reconsideration, JTC states that its protest was limited to the status of the awardee inasmuch as the contracting agency only notified the unsuccessful offerors of the awardee's identity, and it, thus, had no knowledge of the identity of the other firms that had submitted offers or the ranking of these firms. JTC also suggests that because our descriptive guide explaining our Bid Protest Regulations states that an interested party (defined at 4 C.F.R. 21.0(a)) "usually" refers to a firm

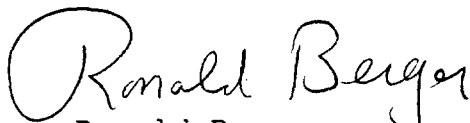
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which would be in line for award if the protest were upheld, JTC's protest should be considered as an exception to the "usual" rule.

Here, after JTC filed its protest, the agency requested that we dismiss JTC's protest because JTC was not in line for award if its protest were upheld. The fact that the protester did not know when it filed its protest that it was not in line for award if the awardee were found ineligible for award does not permit consideration of the protest. Our interested party regulations adopt the language in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551-3556 (1988), granting the General Accounting Office authority to resolve bid protests. CICA provides that only an interested party may protest a federal procurement and defines an interested party as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or by the failure to award the contract. The second low offeror, not JTC, meets this requirement of direct economic interest since that firm would directly benefit from the agency's rejection of the low offer. The descriptive guide language simply was intended to show the most common example of an interested party who meets the direct economic interest definition; it was not intended to suggest that a third low offeror could be an interested party in the circumstances we have here.

We affirm our dismissal.



Ronald Berger
Associate General Counsel